

STATE OF MICHIGAN  
COURT OF APPEALS

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TINA M. SMITH,

Plaintiff-Appellee,

v

WILLIAM D.A. REED and DEMONA REED,

Defendants-Appellants.

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UNPUBLISHED

July 10, 2007

No. 265516

Saginaw Circuit Court

LC No. 03-048194-NI

Before: Fort Hood, P.J., and White and Borrello, JJ.

WHITE, J. (*concurring in part and dissenting in part*).

I am compelled by *Kreiner v Fischer*, 471 Mich 109; 683 NW2d 611 (2004), to dissent in part. Plaintiff concedes that she does not claim a serious impairment of body function due to her knee injury. Because the injury to her back was not objectively manifested, *Kreiner* compels that the award of \$30,000 in non-economic damages be vacated.

Nevertheless, I agree that the award of economic damages should not be disturbed. Under MCL 500.3135(3)(c), an injured person may recover for excess work loss without regard to whether she has suffered a serious impairment of body function. Thus, with regard to the award of economic damages, the only questions are whether the award was supported by the evidence, and whether the verdict was so inconsistent as to mandate that it be vacated. I conclude that the award was supported by sufficient evidence, was not against the great weight of the evidence, and further, was not fatally inconsistent with the remainder of the verdict.

There was substantial evidence that plaintiff worked before the accident and could no longer work after the accident due to persistent pain in her back and leg, caused by the accident. To be sure, there was evidence to support that plaintiff claimed to experience more pain than the doctors would have anticipated based upon their objective findings. Nevertheless, given all the testimony, one could reasonably conclude that plaintiff did, in fact, suffer pain resulting from the accident that rendered her incapable of working. Plaintiff's testimony describing her pain and disability, together with that of her family and friends describing her limited activity and personality changes, and that of her doctors describing her complaints, the treatment to which she subjected herself, and her prognosis, was sufficient to support the jury's award of economic damages. Further, the jury's conclusion that plaintiff actually experienced pain as a result of the accident, which rendered her unable to work, was not against the great weight of the evidence.

Nor was the jury's verdict fatally inconsistent. The jury awarded plaintiff non-economic damages for the three calendar years following the accident, 2001 through 2003.<sup>1</sup> It then awarded only economic damages for the following years. It was within the province of the jury to determine that the major effect of the injury on plaintiff's life was her inability to work and take care of her household needs, and that an economic award replacing that loss would adequately compensate her.

I agree that given the foundation and argument proffered by defendant, the court did not abuse its discretion in excluding evidence regarding plaintiff's workers compensation claim. Further, I reject defendant's argument that evidence regarding the 1994 workers compensation claim would have provided the missing piece that would have validated Dr. Chatfield's theories and the fact of plaintiff's symptom magnification for the jury. The issue of symptom magnification was squarely before the jury, and was clearly accepted in part. The evidence regarding the workers compensation claim was remote and tangential in comparison with the evidence that was actually admitted. Additionally, admission of the evidence would likely have resulted in considerable time being spent on the bona fides of that claim, which was clearly collateral.

/s/ Helene N. White

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<sup>1</sup> The jury's failure to award non-economic damages for the remainder of the accident year, 2000, appears to be a function of an error in the verdict form, which only covered the month of May.